UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, #73- HC[1]

Employer

And

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Petitioner

Case 13-RC-20843

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[4]

> All full time and regular part-time Union representatives and organizers employed by the Employer at its facilities currently located at 309 W. Washington St., #250, Chicago, Illinois and 1301 Texas Street, Gary, Indiana; excluding officers, executive board members, confidential and managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by Office and Professional Employees International Union, AFL-CIO**.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. ***Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before October 11, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by October 18, 2002.

DATED October 4, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.
2/ The arguments advanced by the parties at the hearing and in their post-hearing memoranda have been carefully considered.
3/ The Employer is a corporation engaged in organizing and representing Union members.
4/ The Petitioner seeks to represent a unit of all full time and regular part time union representatives and organizers.

The Employer is a labor organization that organizes and represents members of the health care industry in Chicago, Northwest Indiana and parts of Iowa. There are approximately nine organizers and union representatives working for the Employer out of two locations, located in Chicago and in Gary, Indiana. The parties have stipulated that the petitioned for unit is appropriate, and the only remaining issues are whether one of the petitioned for employees is a confidential employee and whether another petitioned for employee is a statutory supervisor as defined in Section 2(11) of the Act.

The Employer contends that Lorenzo Crowell, the sole Union Representative at the Gary, Indiana office is a statutory supervisor. The Employer claims that Crowell supervises the clerical employee at the Gary site, that he has the authority to effectively recommend individuals for hire, and that he is authorized to run the Gary office independently from the Chicago office. However, the Employer did not sustain its burden that Crowell is a statutory supervisor. I find that whatever supervisory powers exercised by Crowell are ministerial and sporadic, and are not sufficient to establish that he is a statutory supervisor. I, therefore, find that Crowell is appropriately included in the petitioned for unit.

The Petitioner contends that Union Representative Vincent Jones is a confidential employee because he has occasionally worked under the title of Assistant to the President of the Union. The Employer claims that the title is illusory, and was given to Jones only in an attempt to bolster his credibility when negotiating contracts with Cook County. No evidence was adduced to show that the title of Assistant to the President imbued him with any special duties or access to any confidential information. Accordingly, Jones is appropriately included in the petitioned-for unit.

FACTS

The Employer, SEIU Local 73-HC, has only been in existence in its current form since about December 2000. Prior to that date, Locals 73, 73-HC, 1, and 1199 were all encompassed under the Local 73 umbrella. In 2000, the International Union decided to organize locals by areas of practice in order to operate more efficiently. Accordingly, Local 73-HC became the local that represented the health care workers in Chicago, Northwest Indiana, and portions of Iowa.

Before the change, when 73-HC was still a part of Local 73, the Employer maintained one office in Chicago, and one in Gary, Indiana. While the Chicago office housed the

offices for many of the constitutionally elected individuals, the Gary office employed approximately three union representatives, including one supervisor who was responsible for the entire office in Gary, Alice Bush. One of the three representatives is Crowell, who has worked at the same Gary office since about 1974. After the separation of 73-HC from Local 73, Bush and another union representative opted to stay with Local 73 due to the nature of the workers that they represented, and left the Gary office to work at the main office for Local 73 in Chicago, leaving Crowell as the sole representative of 73-HC in the Gary office. Crowell then became responsible for all health care worker units in Northwest Indiana and parts of Iowa. Tom Brem, the Vice President of 73-HC, with an office in Chicago, remains the official supervisor for the Gary office, and is required to visit the office at least once a month.

Upon taking the responsibilities for the additional units in early 2001, Crowell contacted President Pia Davis and Brem to ask them if the Union could hire another Union Representative for the Gary office. Davis decided not to hire an additional representative, but opted to hire a part time clerical employee to aid Crowell's efforts in Gary.

Brem and Davis then decided to attract applicants for the clerical position by placing an advertisement in the newspaper. Crowell recommended a few papers from Northwest Indiana that were most likely to attract applicants, and Davis and Brem placed the advertisement in the suggested newspapers. The applicants were required to send their resumes to the Chicago office, where Brem and Office Manager DeLane Warren reviewed them. When Brem and Warren narrowed the field of applicants, they decided to hold interviews at the Gary office. Two rounds of interviews were conducted, with Crowell present for both interview sessions. During the first round, Warren conducted the interviews, and during the second, Warren and Brem. Crowell was asked at each set of interviews if he had any questions for the applicants, but does not remember if he actually asked any questions of the potential employees. Crowell testified that he was conducting representational work at the time of the interviews and was merely there to be introduced to the individuals. Brem, Warren, and Crowell then discussed the applicants and decided that Karla Goodloe should be offered the position. Warren and Brem communicated the decision to Davis, who made the ultimate decision to hire Goodloe. There is no indication that Crowell had any communication with Davis regarding the hire of Goodloe.

During Goodloe's first year of employment, she worked approximately 20 hours per week. Brem instructed her and Crowell that her hours were dependent upon Crowell's needs at the office. Because Crowell usually spent afternoons in the field, he told her that he believed that she would be best utilized in the morning and, thus, she, mostly worked morning hours. Goodloe was required, by Warren and the managers at the Chicago office, to submit her hours each week to receive her pay. She was further required to have Crowell sign her time sheet each week to verify that she was, in fact, working the hours claimed.

In early 2002, the managers agreed to allow Goodloe to begin working a full time schedule. This decision was made by Davis and Brem after they were informed by Crowell that Goodloe was no longer in school and that he needed extra help at the Gary office. Upon Goodloe's transition to full time status, she was no longer required to submit her hours each week or to otherwise have Crowell verify her attendance at work. If Goodloe intends to be absent or late from work, she notifies Crowell by phone and submits the appropriate paperwork to the Chicago office upon her return to the office. Prior to the filing of the petition, those requests for absences were approved by Office Manager Warren.

The Employer admits that it does not have a set manner in evaluating employees. From the record evidence, it appears that the evaluations are done on an informal basis. During Goodloe's two years with the Gary office, she has never received a formal evaluation. Crowell admits that in response to questions from Brem and Davis regarding Goodloe's performance, he has informed them that he thinks Goodloe is a good employee. There was no evidence to show that any job action, positive or negative, has been based upon Crowell comments regarding Goodloe's performance.

Since Crowell and Goodloe are the only two union employees at the Gary office, Goodloe does work primarily on behalf of Crowell. Crowell testified that Goodloe has, on occasion, been assigned work by both Brem and Davis, but that the majority of her work is assisting him in his duties. The testimony of other union representatives shows that Goodloe performs the same duties as her counterparts in the Chicago office: typing, filing, faxing, copying, answering telephones, and occasionally helping with a special project or campaign.

Crowell works under the same benefit package and employee manual as the other union representatives and clerical employees in both the Chicago and Gary offices. There was some evidence presented to indicate that Crowell was given a raise based upon his additional workload in Gary, but no evidence was presented to show that Crowell was paid more or less than other union representatives in Chicago.

While things significantly changed at the Gary office, resulting in great change for Crowell, the Chicago office remained remarkably similar for the union representatives. Vincent Jones was originally employed by Local 73 in 1997 as a Union representative and continued in that capacity for Local 73-HC after the split. Jones functioned as one of the main representatives for all the health care units under the umbrella of the Cook County Hospital system, along with union representative Richards, and President Davis. Prior to the creation of 73-HC, Davis was a Vice President for Local 73, and has always remained involved in the negotiations and grievances stemming from any of the Cook County Hospital Units. Both during his tenure with Local 73 and with Local 73-HC, Jones has filled in for Davis when she was unable to attend a negotiation session or grievance meeting. When working for Local 73, he was often referred to as the Assistant to the Vice President to bolster his bargaining power with the County. After the split, he has been referred to as assistant to the President for the same reasons. He has never acted as the President or been imbued with any responsibilities outside union representative

duties for the Cook County units. Jones does not participate in any managerial meetings dealing with the Employer's governance, and has not received any confidential information about the Employer's affairs since the split from Local 73.

ANALYSIS AND CONCLUSIONS

A. Supervisory Status of Crowell

The Employer claims that Crowell is a statutory supervisor due to the fact that he is the only professional that works in the Gary office and that he oversees and directs the work of the clerical employee, Karla Goodloe. The evidence shows that any supervisory indicia that Crowell may have is perfunctory and is not sufficient to show that Crowell is a supervisor. Accordingly, I find that the Employer failed to satisfy its burden of proving that Crowell is a statutory supervisor.

As the party asserting that Crowell is a supervisor, the Employer bears the burden of proof. *NLRB v. Kentucky River Community Health Care, Inc.,* 532 U.S. 706, 710 (2001). In order to meet this burden, the Employer must demonstrate by a preponderance of credible evidence, that Crowell engages in activities described by Section 2(11) of the Act. *Star Trek: The Experience*, 334 NLRB No. 29 slip op. At 6 (2001). Section 2(11) of the Act defines a supervisor as:

> Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote discharge, assign, reward or discipline employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

While the exercise of any one of these types of authority is sufficient to confer supervisory status, it is well settled that such authority must be exercised with "independent judgment on behalf of management and not in a routine or sporadic manner", *International Center for Integrative Studies/ The Door* 297 NLRB 601 (1990). The exercise of some supervisory authority "in merely routine, clerical perfunctory or sporadic manner does not confer supervisory status on an employee. *Bowne Of Houston, Inc.* 280 NLRB 1222, 1223 (1986*), Clark Machine Corp.,* 308 NLRB 555 (1992*).* In each case, the differentiation must be made between the exercise of independent judgment and the routine following of directions; between effective recommendation and the forceful suggestion; and between the appearance of supervision and supervision in fact. See *Chevron Shipping Col,* 317 NLRB 379 (1995*); JC Brock Corp.,* 314 NLRB 157 (1994*).* Because the statute is ambiguous as to the degree of discretion required for supervisory status, it is within the Board's discretion to determine this issue. *Kentucky River,* 532 U.S. at 713.

In the event that "the evidence is in conflict or otherwise inconclusive on any particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established at least on the basis of those indicia. *Phelps Community Medical Center,* 295 NLRB 468, 490 (1989).

1. Hiring Authority

While having the power to effectively recommend the hire of employees is indicia of supervisory status, employees' suggestions, which do not rise to the level of recommendations, are not. *Brown & Root, Inc.* 314 NLRB 19 (1994). The record evidence indicates that Crowell was included in the interviews of prospective clerical personnel due to the fact that, as the only other employee in the office, his ability to have a personally amicable relationship with the individual was paramount. While Crowell was offered an opportunity to ask questions of the applicants, there is no evidence that he did so, or that his input was essential to the process. Thus, there is no evidence that Crowell had any meaningful input or effective recommendation regarding Goodloe's hire or the hire of any other employee. Accordingly, I find that Crowell is not authorized to effectively recommend the hire or fire of any employee.

2. Setting Hours/Approval of Leave

While it appears from the facts that Crowell does have some role to play in the setting of Goodloe's hours and leave, the evidence is insufficient to show that Crowell has the authority to independently authorize leave that has not already been granted by the Chicago office. The Chicago management, which is ultimately responsible for any time keeping or payroll functions, has no way of knowing Goodloe's work hours or attendance without Crowell. Similarly, given the fact that Goodloe and Crowell are the only two employees at the site, Crowell has the most invested in her arrival to work. Thus, if Goodloe were to be late, or absent for a day, it only makes sense that she would contact Crowell first and the Chicago office after her return. Significantly, it was Davis and Brem who made the decision to allow Goodloe to change to full-time status, and Warren who approved all of Goodloe's leaves requests before the petition was filed.

Being the highest paid or highest-ranking employee on the premises does not make an employee a statutory supervisor. *Ken-Crest Services,* 335 NLRB No. 63, slip op. at 3 n.16 (2001). In none of the aspects described above does Crowell show any independent judgment. He and Goodloe have simply devised a system whereby they can operate the office efficiently and cooperatively. Even in the past, where Crowell was required to verify Goodloe's hours, the evidence shows that this was merely a verification function, and did not serve as an approval or disapproval of the time sheet. Accordingly, I find that Crowell does not possess the requisite authority to set the hours of work for Goodloe or any other employees.

3. Assignment of work

The Employer alleges that Crowell's supervisory status is evidenced by the fact that he assigns work to Goodloe on a daily basis. While the evidence shows that Goodloe works directly with Crowell and performs only the work that he gives to her, it is insufficient to show that Crowell has the authority to assign work. The evidence shows that Goodloe is engaged in the types of work that are done by persons with the same position in the Chicago office. The testimony also shows that Crowell does not assign her work that is beyond the type of work that all business representatives assign their assigned clerical personnel. It is well established that the assignment of work to another employee that is routine in nature does not establish supervisory status. *Byers Engineering Corp.,* 324 NLRB 740 (1997). Since no evidence was presented to show that Crowell's assignment of work to Goodloe was anything but routine in nature, I find that Crowell does not have the authority to independently assign or direct work to employees.

4. Secondary Indicia of Supervisory Status

In addition to the factors outlined above, the Employer also asserts that certain other factors warrant a finding that Crowell is a supervisor. Specifically, the Employer alleges that the following factors prove that Crowell is a statutory supervisor: (1) that Crowell received a pay raise to compensate him for his alleged supervisory authority; (2) that Crowell has independent authority to make expenditures on behalf of the Union and (3) that Crowell evaluates Goodloe's work performance.

When there is no evidence that an individual possesses any of the several primary indicia for statutory supervisory status enumerated in Section 2(11) of the Act, the secondary indicia are insufficient by themselves to establish statutory supervisory status. *J.C. Brock Corp.* 314 NLRB 157, 159 (1994); *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982). Since Crowell does not possess any of the statutory primary indicia enumerated in Section 2(11) of the Act, the minor indications on the record of secondary statutory indicia are not dispositive and need not be discussed further.

The evidence when considered in the totality shows that Crowell has slightly more autonomy in performing his job duties than other union representatives at the Chicago office. This autonomy is the direct result of the Gary, Indiana, office's geographical isolation from the hub office in Chicago, as well as the apparent lack of involvement exercised by the Chicago managers. The fact that Crowell is given a heavier workload due to the Gary office's isolation from the Chicago office does not, without more, establish supervisory status. The absence of a statutory supervisor on site does not confer any greater authority to a senior employee simply because of the small number of employees at the jobsite. See *Training School at Vineland*, 332 NLRB No. 152, slip op. at 1. The Employer failed to show that Crowell exercised any independent judgment in any of his duties, or that these duties were the result of anything other than isolation and remote management. Therefore, the Employer failed to establish that Crowell is a statutory supervisor. Accordingly, Crowell is appropriately included in the petitioned for unit.

B. Confidential Status of Jones

The Petitioner alleges that Jones is a confidential employee due to the fact that he, unlike any other Union representatives, is referred to by Davis as the Assistant to the President. The evidence was insufficient to show that the title made Jones privy to any labor-management decisions or confidential information. In fact, the title was used only in reference to representational duties with Cook County Hospitals. Thus, I find that Jones is not a confidential employee and is therefore appropriately included in the petitioned for unit.

As the party asserting that Jones is a confidential employee, the Petitioner bears the burden of proof. *Crest Mark Packing,* 283 NLRB 999 (1987). A confidential employee is defined as an employee who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or regularly substitute for employees having such duties. *Ladish Co.,* 178 NLRB 90 (1969); *Chrysler Corp.,* 173 NLRB 1046 (1969). As stated in *NLRB v. Hendricks County Rural Electric Membership Corp.,* 454 U.S. 170, 188-89 (1981), there must be a "labor-nexus" connection to exclude someone as a confidential employee. However, even if an employee occasionally has access to confidential information, or engages in limited confidential duties, s/he will not be excluded. *Crest Mark Packing,* 283 NLRB at 999. An employee must regularly have access to confidential information concerning anticipated charges, which may result from collective bargaining negotiations to warrant exclusion from the unit. *Pullman-Standard Div. Of Pullman, Inc.,* 214 NLRB 762, 763 (1974).

Employees of labor organizations are similarly not confidential unless they meet the standard test for confidentiality set forth in *Air Line Pilots Assn.* 97 NLRB 929 (1951). Only employees of a [labor organization] who act in a confidential capacity in relation to persons who formulate, determine and effectuate the labor relations policies directly affecting the [labor organization's] own employees are excluded as confidential. *Pacific Maritime Assn.,* 185 NLRB 780 (1970).

The Union alleges that Jones is a confidential employee because he has been referred to as the Assistant to the President and that he acts in lieu of the President in negotiations between the Employer and Cook County Hospital system. The totality of the testimony shows that Davis does refer to Jones as Assistant to the President, but that the title is merely a tactic in garnering more credibility for Jones when he must fill her shoes as a negotiator or grievance representative with the Cook County administration.

While Jones has been referred to as Assistant to the President both to representatives of Cook County and to other Union representatives, there is no evidence to show that the title results in any additional duties or privileges for Jones. The record evidence shows that Jones works in the capacity of a business representative *only*, even when working under the title. The title given to an employee is not determinative of status. It is the real job duties that an employee performs that is dispositive in determining one's confidential status. *Demco New York Corp.,* 337 NLRB No. 135 (2002). It is clear from the record

that the title is merely an attempt by the Employer to bolster the credibility of Jones, and carries no real authority.

Accordingly, the Union has not offered any evidence to show that Jones acts in a confidential capacity in the course of his job duties, and is therefore appropriately included in the petitioned for unit.

Based on the foregoing, it is the opinion of the undersigned that the record herein fails to establish that Jones assists managers who formulate labor relations policies, or that Crowell exercises the required independent judgment in any of his duties. I cannot in the absence of finding evidence to support the contentions of the parties find that Jones is a confidential employee or that Crowell is a supervisor as defined in Section 2(11) of the Act. Therefore, I have included them in the unit found appropriate. There are approximately 9 employees in the unit found appropriate herein.

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Voter Eligibility-Statutory Exclusion-Supervisors, Guards